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DIV. OF OIL, GAS & MINING

JAN 24 2007

Mr. Ranvir Singh, Manager
Program Support Operations
Office of Surface Mining Reclamation and Enforcement
P.O. Box 46667
Denver, Colorado 80201-6667

C/007/022

Dear Mr. Singh:

On January 22, 2007, I received your letter of January 3, 2007, in which you presented the Office of Surface Mining's (OSM) position on the need for a new mining plan approval for the Lila Canyon Mine. I appreciate your efforts to summarize your position and provide me with an opportunity to comment. As we have discussed, the Bureau of Land Management (BLM) Utah State Office does not agree with OSM's position that a new mining plan approval is necessary as outlined in your letter and attached analysis. In your letter, you list four reasons to support your position that a new mining plan approval is necessary. My comments on these reasons are as follows:

(1) The mining plan that was approved on November 05, 2001, was based, among others (sic) documents, on the DOGM permit findings and recommendations and existence of a valid lease issued by BLM.

This appears to be a statement of facts rather than a reason supporting OSM's position that new mining plan approval is required. This approval should have also been based on the recommendations of BLM on the Resource Recovery and Protection Plan and conformance with the federal coal lease terms.

(2) Subsequent to invalidation of the DOGM permit by the Utah Board of Oil, Gas and Mining, BLM put the leases in suspension. These two regulatory actions rendered the ASLMM approval of the original mining plan for an area for which there was no valid DOGM permit or right to mine.

It is not clear what you mean by this reason, but it appears that you are taking the position that the mining plan approval by the Assistant Secretary lost its effect due to Utah's action on the permit and BLM's subsequent action to suspend the leases. The preamble to the 30 CFR 740 regulations clearly point out a distinction between the Surface Mining Control and Reclamation Act (SMCRA) permit issued by the State under their approved program and the Mineral Leasing Act (MLA) Mining Plan. They are separate approvals, and on federal coal leases, the operator needs both before mining can start. There is no legal basis to suggest that suspension of the coal leases by BLM would negate the mining plan approval. A lease suspension does not take away a lessee's right to mine, rather it provides the lessee relief from the operation and production requirements of a federal lease. The lease "contract" is still in force. Further, the regulations specifically provide that the lease suspension does not suspend the permit. Under the regulatory scheme to implement SMCRA, both a SMCRA permit

and MLA authorization are needed to conduct mining operations. When the Board of Oil, Gas, and Mining reversed the Division's decision and denied the permit, the approved mining plan was not affected. The regulations provide that *"An approved mining plan shall remain in effect until modified, cancelled or withdrawn and shall be binding on any person conducting mining under the approved mining plan"* (30 CFR 746.17(b)). It appears logical that only the entity approving the plan would have the authority to cancel or withdraw the plan. Therefore, BLM believes that the mining plan approval is still in effect. Any action to cancel or withdraw the approved mining plan would need to be taken by the Assistant Secretary.

(3) The legal description and area of Federal leases that were covered in the State permit and the existing mining plan decision document are incomplete and incorrect.

BLM agrees that there is a problem with the legal description in the existing mine plan approval document that needs to be corrected. At a minimum, the federal mine plan approval should cover the leases that comprise the logical mining unit (LMU). The regulations at 43 CFR 3482.1(c) provides, *"The resource recovery and protection plan shall contain all the requirements pursuant to MLA for the life-of-the-mine."* In this case, the plan should cover the entire LMU. In the Secretarial Decision Document prepared by OSM for the mining plan approval properly listed all of the federal coal leases but included a legal description that only covered part of the LMU. A question that should be addressed is whether a new mining plan approval would be required from the Assistant Secretary to correct the error(s) in the legal description. Correcting the legal description to properly conform to the listed leases can be done administratively without requiring a new approval by the Assistant Secretary.

In your attachment that addresses the legal description issue, the statement was made that the mining plan should *"describe only that acreage which is included in the State permit"*. BLM does not agree that the lands described in the mining plan needs to be exactly the same as the lands in the permit. In this case, the surface coal mining and reclamation operations addressed in the SMCRA permit issued by the State of Utah are primarily on federal lands that are not part of a federal coal lease. It is appropriate to include these lands in the State's permit, because there are surface coal mining and reclamation operations that should be regulated under SMCRA. However, occupancy of these lands is authorized by a right-of-way granted under the authority of the Federal Land Policy Management Act instead of a coal lease under MLA. Therefore, no federal mining plan approval should be required for the lands within the right-of-way.

(4) Documentation in the existing mining plan decision document to assure compliance with applicable requirements of other Federal laws, specifically those of the Endangered Species Act and the National Historic Preservation Act, are incomplete and inadequate.

In the October 25, 2001, letter from the Acting Director, OSM to the Assistant Secretary, Lands and Minerals Management, OSM recommended approval of the mining plan based on the determination that documentation existed *"assuring compliance with applicable requirements of other Federal laws, regulations, and executive orders"*. This may be a situation where the original finding met the requirements at the time but the standards have changed. We believe that there are a number of mining plan approvals in Utah where the determinations made under the National Historic Preservation Act may not meet the same standard you are now applying to this action. We do not believe that these plans should also be cancelled and reissued for this reason alone. The Assistant Secretary's decision has been in place for over 5 years, and BLM has relied on the decision to approve a modification to the resource recovery and protection plan as provided in 43 CFR 3482.2(c). The adequacy of the mining plan decision has not been challenged and there is no indication that a new mining plan decision would result in a different outcome. BLM maintains that there is no reason for the Assistant Secretary to revisit the decision.

An additional issue that should be addressed regarding whether or not a new mining plan decision is necessary relates to who has the authority to make that determination. Two things need to be considered. First, the mining plan approval decision was initially made by the Assistant Secretary based, among other things, on recommendations from OSM and BLM. BLM believes that a decision to withdraw or cancel the mining plan approval should follow the same process. That is, the Assistant Secretary would need to withdraw or cancel the decision, and this action should be based on recommendations from both OSM and BLM. Secondly, the regulations at 30 CFR 740 make it clear that the mining plan approval by the Secretary is made under the authority of the MLA. The Department Manual at 235 DM 1.1.K. provides, "*The Director, Bureau of Land Management, may exercise the authority of the Assistant Secretary - Land and Minerals Management for administering operations on oil and gas, geothermal, and other mineral leases on Federal and Indian lands under the Mineral Leasing Act of 1920*". Because BLM has the delegated authority of the Assistant Secretary under the MLA, BLM should be able to provide input to any decision to withdraw an approval granted in accordance with the MLA. It would be inappropriate for OSM to unilaterally send a decision document to the Assistant Secretary without adequately considering BLM's concerns.

The issues raised above have been reviewed with the Regional Solicitor's Office, and we believe our position has a sound legal basis. We would welcome the opportunity to discuss these issues with OSM.

Sincerely,

JAMES F KOHLER

James F. Kohler
Chief, Branch of Solid Minerals

Cc: Mary Ann Wright, DOGM
Kent Hoffman, BLM
Pete Rutledge, OSM

OSM Lila response 1-24-07 jk-sa